

skill required for work, describe how the Guidelines in appendix 2 of subpart P of part 404 of this chapter apply to claims under part 416, and explain when, for purposes of applying the Guidelines in appendix 2, we consider the limitations or restrictions imposed by your impairment(s) and related symptoms to be exertional, non-exertional, or a combination of both.

(k) Our rules on substantial gainful activity are found in §§ 416.971 through 416.974. These explain what we mean by substantial gainful activity and how we evaluate your work activity.

(l) In §§ 416.981 through 416.985 we discuss blindness.

(m) Our rules on when disability or blindness continues and stops are contained in §§ 416.986 and 416.988 through 416.998. We explain what your responsibilities are in telling us of any events that may cause a change in your disability or blindness status, when you may have a trial work period, and when we will review to see if you are still disabled. We also explain how we consider the issue of medical improvement (and the exceptions to medical improvement) in determining whether you are still disabled.

[45 FR 55621, Aug. 20, 1980, as amended at 50 FR 50136, Dec. 6, 1985; 56 FR 5553, Feb. 11, 1991; 56 FR 57944, Nov. 14, 1991; 62 FR 6420, Feb. 11, 1997]

#### **§ 416.902 General definitions and terms for this subpart.**

As used in this subpart—

*Adult* means a person who is age 18 or older.

*Child* means a person who has not attained age 18.

*Commissioner* means the Commissioner of Social Security.

*Disability redetermination* means a redetermination of your eligibility based on disability using the rules for new applicants appropriate to your age, except the rules pertaining to performance of substantial gainful activity. For individuals who are working and for whom a disability redetermination is required, we will apply the rules in §§ 416.260 ff. In conducting a disability redetermination, we will not use the rules for determining whether disability continues set forth in § 416.994 or § 416.994a. (See § 416.987.)

*Impairment(s)* means a medically determinable physical or mental impairment or a combination of medically determinable physical or mental impairments.

*Marked and severe functional limitations*, when used as a phrase, means the standard of disability in the Social Security Act for children claiming SSI benefits based on disability and is a level of severity that meets or medically or functionally equals the severity of a listing in the Listing of Impairments in appendix 1 of subpart P of part 404 (the Listing). See §§ 416.906, 416.924, and 416.926a. The words “marked” and “severe” are also separate terms used throughout this subpart to describe measures of functional limitations; the term “marked” is also used in the listings. See §§ 416.924 and 416.926a. The meaning of the words “marked” and “severe” when used as part of the term *marked and severe functional limitations* is not the same as the meaning of the separate terms “marked” and “severe” used elsewhere in 20 CFR 404 and 416. (See §§ 416.924(c) and 416.926a(c).)

*Medical sources* refers to treating sources, sources of record, and consultative examiners for us. See § 416.913.

*Secretary* means the Secretary of Health and Human Services.

*Source of record* means a hospital, clinic or other source that has provided you with medical treatment or evaluation, as well as a physician or psychologist who has treated or evaluated you but does not have or did not have an ongoing treatment relationship with you.

*State agency* means that agency of a State which has been designated by the State to carry out the disability or blindness determination function.

*Treating source* means your own physician or psychologist who has provided you with medical treatment or evaluation and who has or has had an ongoing treatment relationship with you. Generally, we will consider that you have an ongoing treatment relationship with a physician or psychologist when the medical evidence establishes that you see or have seen the physician or psychologist with a frequency consistent with accepted medical practice

for the type of treatment and evaluation required for your medical condition(s). We may consider a physician or psychologist who has treated you only a few times or only after long intervals (e.g., twice a year) to be your treating source if the nature and frequency of the treatment is typical for your condition(s). We will not consider a physician or psychologist to be your treating physician if your relationship with the physician or psychologist is not based on your need for treatment, but solely on your need to obtain a report in support of your claim for benefits. In such a case, we will consider the physician or psychologist to be a consulting physician or psychologist.

*We* or *us* refers to either the Social Security Administration or the State agency making the disability or blindness determination.

*You* refers to the person who has applied for or is receiving benefits based on disability or blindness.

[56 FR 36962, Aug. 1, 1991, as amended at 58 FR 47577, Sept. 9, 1993; 62 FR 6420, Feb. 11, 1997; 62 FR 13733, Mar. 21, 1997]

#### DETERMINATIONS

#### **§ 416.903 Who makes disability and blindness determinations.**

(a) *State agencies.* State agencies make disability and blindness determinations for the Commissioner for most persons living in the State. State agencies make these disability and blindness determinations under regulations containing performance standards and other administrative requirements relating to the disability and blindness determination function. States have the option of turning the function over to the Federal Government if they no longer want to make disability determinations. Also, the Commissioner may take the function away from any State which has substantially failed to make disability and blindness determinations in accordance with these regulations. Subpart J of this part contains the rules the States must follow in making disability and blindness determinations.

(b) *Social Security Administration.* The Social Security Administration will make disability and blindness determinations for—

(1) Any person living in a State which is not making for the Commissioner any disability and blindness determinations or which is not making those determinations for the class of claimants to which that person belongs; and

(2) Any person living outside the United States.

(c) *What determinations are authorized.* The Commissioner has authorized the State agencies and the Social Security Administration to make determinations about—

(1) Whether you are disabled or blind;

(2) The date your disability or blindness began; and

(3) The date your disability or blindness stopped.

(d) *Review of State agency determinations.* On review of a State agency determination or redetermination of disability or blindness we may find that—

(1) You are, or are not, disabled or blind, regardless of what the State agency found;

(2) Your disability or blindness began earlier or later than the date found by the State agency; and

(3) Your disability or blindness stopped earlier or later than the date found by the State agency.

(e) *Initial determinations for mental impairments.* An initial determination by a State agency or the Social Security Administration that you are not disabled (or a Social Security Administration review of a State agency's initial determination), in any case where there is evidence which indicates the existence of a mental impairment, will be made only after every reasonable effort has been made to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment. (See § 416.1016 for the qualifications we consider necessary for a psychologist to be a psychological consultant and § 416.1017 for what we consider *reasonable effort*.) If the services of qualified psychiatrists or psychologists cannot be obtained because of impediments at the State level, the Commissioner may contract directly for the services. In a case where there is evidence of mental and nonmental impairments and a